

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL NOTE

HB 636 - SB 603

February 27, 2021

SUMMARY OF BILL: Creates the *Health Benefit Plan Network Access and Adequacy Act*.

Requires a health carrier providing a network plan to maintain a network that is sufficient in numbers and appropriate types of providers, including those that serve predominantly low-income, medically underserved individuals, to ensure that all covered services to covered persons, including children and adults, will be accessible without unreasonable travel or delay and ensure that covered persons have access to emergency services 24 hours per day, 7 days per week and without unreasonable travel or delay.

Tasks the Commissioner of the Department of Commerce and Insurance (DCI) with determining sufficiency in accordance with the requirements of this section, and may establish sufficiency by reference to any reasonable criteria.

Requires a health carrier to have a process to assure that a covered person obtains a covered benefit at an in-network level of benefits, including an in-network level of cost-sharing, from a non-participating provider. The health carrier shall treat the healthcare services the covered person receives from a nonparticipating provider as if the services were provided by a participating provider, including applying the covered person's cost-sharing for the services toward any maximum out-of-pocket limit applicable to services obtained from participating providers under the health benefit plan.

Beginning July 1, 2021, requires a health carrier to file with the Commissioner of DCI, for review and approval, prior to or at the time it files a newly offered network, in a manner and form defined by the Commissioner by rule, an access plan that meets the requirements of this part.

Establishes violation of this part is a Class A misdemeanor. The proposed legislation has an effective date of January 1, 2022.

ESTIMATED FISCAL IMPACT:

**Increase State Expenditures – \$171,700/FY21-22
\$168,500/FY22-23 and Subsequent Years**

Other Fiscal Impact – An additional increase in state expenditures to the Division of TennCare may be realized as a result of this legislation, as well as a corresponding increase in federal expenditures. The extent of any increase in

expenditures associated with an increase in provider rates and paying out-of-network providers is unknown and dependent upon further action by the Department of Commerce and Insurance.

Passage of the proposed legislation could jeopardize a portion or all of federal funding to the Division of TennCare received for the Medicaid program of approximately \$9,502,600,952 in FY21-22 and subsequent years if it is determined the state is noncompliant with federal law.

Assumptions:

- The requirements in the legislation could result in an increase in expenditures to the Division of TennCare and the State Group Health Insurance plan if health carriers are required to raise provider rates or start paying providers that are not currently in-network. The extent of any increase in state expenditures associated with an increase in provider rates and paying out-of-network providers is unknown and dependent upon further action by the DCI.
- Based on information provided by the DCI, the proposed legislation cannot be accommodated within existing resources. The DCI will require one Examination Director position and one Examiner position to review provider networks to ensure health carriers maintain network adequacy.
- The one-time increase in state expenditures associated with the two new positions is estimated to be \$3,200 (\$1,600 computer cost x 2 positions).
- The recurring increase in state expenditures associated with the Examination Director position is estimated to be \$101,772 (\$74,544 salary + \$19,128 benefits + \$1,400 communications + \$600 supplies + \$6,100 Administrative cost).
- The recurring increase in state expenditures associated with the Examiner position is estimated to be \$66,761 (\$44,520 salary + \$14,141 benefits + \$1,400 communications + \$600 supplies + \$6,100 Administrative cost).
- The total increase in state expenditures is estimated to be \$171,733 (\$101,772 + \$66,761 + \$3,200) in FY21-22.
- The total increase in state expenditures is estimated to be \$168,533 (\$101,772 + \$66,761) in FY22-23 and subsequent years.
- There will not be a sufficient number of Class A misdemeanor prosecutions for state or local government to experience any significant increase in fine revenue or expenditures.
- Pursuant to 42 CFR 431.10(e), the state Medicaid agency is required to be the single state agency to supervise the plan or to develop or issue policies, rules, and regulations on program matters.
- Requiring the DCI to determine network adequacy matters will put the Division of TennCare out of compliance with federal regulations and could jeopardize a portion or all of approximately \$9,502,600,952 in federal funding in FY21-22 and subsequent years.

IMPACT TO COMMERCE:

Other Commerce Impact – Due to multiple unknown factors, the exact impact to commerce cannot be determined.

Assumptions:

- Due to multiple unknown factors, such as what standards DCI will set, current coverage levels, and what new coverage would be required, the exact impact to commerce cannot be determined.
- The network adequacy requirements in the legislation could increase health care plan costs, especially if the health carrier is required to raise provider rates or start paying providers that are not currently in-network.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink that reads "Bojan Savic". The signature is written in a cursive, flowing style.

Bojan Savic, Interim Executive Director

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